

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HASAN ALI ABDUR-RAQIYB, 71-C-0140,

Plaintiff,

v.

ERIE COUNTY MEDICAL CENTER (ECMC),  
PAMELA DIANE REED, M.D.,  
WYOMING COUNTY COMMUNITY HOSPITAL,  
TWIN CITY AMBULANCE SERVICES,

Defendants.

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DECISION & ORDER

04-CV-6118L

By order dated April 12, 2005, the above-captioned matter has been referred to the undersigned for the supervision of pre-trial discovery and the hearing and disposition of all non-dispositive motions, pursuant to 28 U.S.C. §§ 636(b)(A) and (B). (Docket # 39).

Currently before the Court are plaintiff's *pro se* motions to compel an answer to his Complaint (Docket # 34), for permission to amend his Complaint (Docket # 35), and to compel answers to discovery requests and preclude defendant Reed from requesting representation by the New York State Attorney General's Office (Docket # 36). Also before the Court is defendant Reed's motion for the substitution of counsel. (Docket # 37). Each of the pending motions shall be addressed in turn below.

**Compel Answer To Complaint:** Plaintiff initially filed the Complaint in this matter on March 26, 2004. (Docket # 1). Service of the Complaint was completed upon defendant Erie County Medical Center on October 22, 2004. (Docket # 9). On March 2, 2005, plaintiff moved to compel Erie County Medical Center's answer to the Complaint. (Docket # 34). Prior to this Court's consideration of the motion, an Answer was filed by Erie County

Medical Center on April 13, 2005. (Docket # 40). Thus, plaintiff's motion to compel such Answer is denied as moot.

**Permission To Amend:** In his second motion, plaintiff requests an "order to amend the complaint upon obtaining the names of the other defendants[] who violated his rights." (Docket # 35). Plaintiff has failed, however, to present the Court with a proposed amended complaint and it appears from his motion that he is unable at this time to identify the individuals he seeks to add as parties to this action. Thus, to the extent plaintiff seeks to amend his Complaint, such motion is denied as premature. By separate Order, this Court has noticed a Rule 16 Scheduling Conference in this matter, which will occur on June 15, 2005, at 11:00a.m. During that conference, the Court will, among other things, identify the dates by which all discovery must be completed and all motions to amend must be filed. Therefore, if after further discovery plaintiff is able to identify specific additional parties or claims that he believes should properly be included within the Complaint, he may renew his motion to amend at that time.

**Compel Discovery Responses and Preclude Representation:** Plaintiff also moves to compel responses by defendant Pamela Diane Reed, M.D. to his First Set of Interrogatories and Request for Production of Documents. (Docket # 36). This motion, however, is also premature. As noted above, a Rule 16 Scheduling Conference will be conducted in this matter on June 15, 2005. The Court will at that time discuss the procedures and deadlines for discovery. Accordingly, plaintiff's motion to compel is denied at this time as premature.

Within this motion, plaintiff also seeks to prohibit defendant Reed from requesting representation by the New York State Attorney General's Office. (Docket # 36). This Court does not have authority to prohibit a defendant from requesting state representation; accordingly, plaintiff's motion is denied.

**Cross Motions by Defendant Reed:** In response to plaintiff's motion to compel discovery responses and to preclude her request for representation by the Attorney General's Office, defendant Reed has cross-moved for an order denying such motions and approving the substitution of counsel. (Docket # 37). To the extent necessary, plaintiff's motion for the substitution of counsel is granted.<sup>1</sup> Moreover, because, as discussed above, this Court has denied plaintiff's motion to compel discovery responses as premature, defendant's cross-motion on this issue is moot.

### **CONCLUSION**

For the foregoing reasons, plaintiff's motion to compel an answer to his Complaint (**Docket # 34**), to amend his Complaint (**Docket # 35**), and to compel answers to discovery demands and to preclude the request for representation by the Attorney General's Office (**Docket # 36**) are **DENIED**. Moreover, Defendant Reed's motion to the substitution of counsel (**Docket # 37**) is **GRANTED**.

**IT IS SO ORDERED.**

s/Marian W. Payson

MARIAN W. PAYSON  
United States Magistrate Judge

Dated: Rochester, New York  
May 10, 2005.

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<sup>1</sup> As a reply to defendant Reed's cross-motion, plaintiff has filed a cross-motion objecting to Reed's request for substitution of counsel. (Docket # 38). For the same reasons state above, plaintiff's cross-motion (**Docket # 38**) is **DENIED**.